

**BEFORE THE DEPARTMENT OF
ELEMENTARY AND SECONDARY EDUCATION**

, a Minor, by and through)

his Parents, ,)

)

Petitioner,)

)

v.)

)

PARK HILL SCHOOL DISTRICT,)

)

Respondent.)

FINDINGS OF FACT, CONCLUSIONS OF LAW,

DECISION AND ORDER

Respondent, the Park Hill School District, submits the following proposed Findings of Fact, Conclusions of Law, Decision and Order. A list of the exhibits jointly submitted by the parties is attached and incorporated by reference herein.

I. Findings of Fact

A. Parties

1. ("the Student"), resided with his Parents within the boundaries of the Park Hill School District ("the School District") at all times relevant to this due process proceeding.

1. Edward B. Rucker represents the Parents of the Student in this proceeding.
2. Linda J. Salfrank and Kirsten A. Roth represent the School District in this proceeding.
3. The hearing officer in this proceeding is Robert P. Baine, Jr. The panel members are Jerry Wright and George Wilson.

A. Procedural History and Jurisdiction of this Panel

Petitioner made the request for due process on Thursday, November 8, 2001, which triggered the "stay put" provision of the IDEA. See 20 U.S.C. § 1415(j). The "stay put" provision provides that "during the pendency of any proceeding ... the child shall remain in the then-current educational placement of such child...." Id.

The School District received notice of the request for due process on Friday, November 9, 2001. Under the terms of a ten-day suspension, the Student was scheduled to resume classes at the Plaza Middles School on the following Monday, November 12, 2001. Concerned for the safety of the students and staff if the Student were to return to the Plaza Middle School, on the same day that it received notice of the due process, November 9, 2001, the School District petitioned the Circuit Court of Platte County, Missouri, for a Temporary Restraining Order to avoid "stay put" and to enjoin the Student from attending the regular education school, Plaza Middle School. The Court granted the Temporary Restraining Order pursuant to Missouri Rule of Civil Procedure 92.02. The Court did not make any ruling regarding the merits of petitioner's claims in this proceeding or the placement of the child during the pendency of this proceeding. Rather, the Court limited its ruling to the requisite finding of "immediate and irreparable injury, loss, or damage ... in the absence of the relief." See Mo. R. Civ. P. 92.02(a)(1). Since the initial Temporary Restraining Order was granted, the parties have stipulated to an extension of the Temporary Restraining Order pending resolution of this due process proceeding.

Parties to a due process proceeding are not precluded from pursuing a temporary restraining order by a court pending administrative resolution. See, e.g., Light v. Parkway C-2 Sch. Dist., 41 F.3d 1223, 1225 (8th Cir. 1994) (holding that school districts are entitled to seek injunctive relief in appropriate cases to avoid "stay put" during an administrative appeal); School Board of Pinellas County, Florida v. J.M., 957 F. Supp. 1252 (M. D. Fla. 1997) (granting a school district a preliminary injunction to prevent application of the stay put provision of the IDEA pending the outcome of a placement dispute in an administrative proceeding).

For example, in San Ramon Valley Unified Sch. Dist., 33 IDELR 21 (Cal. 2000), the school district obtained a temporary restraining order from a court pending due process. The parents challenged the restraining order, claiming that only the administrative panel had jurisdiction over the matter. The panel in San Ramon

rejected the parents' claim, finding that the "district had the right to seek a court injunction to remove a dangerous student from school by showing that there was a substantial likelihood of harm to the student or others..." Id.

The School District's petition for a Temporary Restraining Order to avoid "stay put" does not divest this panel of jurisdiction to determine the merits of petitioner's claims. See 20 U.S.C. §§ 1415(b)(6), 1415(f); Mo. Rev. Stat. §§ 162.963, 162.961; Cumberland County Bd. of Educ., 33 IDELR (N. Car. 2000) (holding that the administrative panel had jurisdiction to determine the placement and educational services for a student under the IDEA where a court had entered a temporary restraining order in favor of the school district to place the student in an interim alternative placement). In fact, the Circuit Court does not have jurisdiction over the issues of placement and educational services and therefore cannot rule on these issues. State ex rel. Clinton Area Vocational Sch. v. Dandurand, 766 S.W.2d 169, 170-71 (Mo. App. W.D. 1989) (holding that circuit courts do not have jurisdiction over issues of educational placement and services until a final order by an administrative panel and review by the state board).

B.

C. Issues

The crux of petitioner's claims regards the November 2, 2001 decision by the IEP team to change the educational placement of the Student from Plaza Middle School to Niles Prep. Petitioner requested the following in the request for due process: (a) placement in a regular education setting; (b) that "extensive suspension and expulsion should not be done;" (c) that the Student be provided with a full-time paraprofessional; (d) that the School District provide triage services (speech, counseling, and occupational therapy); (e) that the Student be allowed to attend social functions sponsored by the School District during any suspension/expulsion; (f) that the School District provide counseling services; and (g) reimbursement for all attorney's fees, witnesses, independent assessments and costs accrued in pursuing due process. (Petitioner's Request for Due Process).

At the beginning of the hearing for this matter, it was determined that petitioner was pursuing the following issues: (1) the appropriateness of the placement at Niles Prep and (2) whether, on October 24, 2001, the School District responded to an incident involving the Student in a manner inconsistent with his IEP. (Tr. 29:7-20). The petitioner did not pursue any other issue raised in the request for due process. (Tr. 34:10-22).

D. Facts

1. The Student is a -year-old male enrolled in Park Hill School District as a seventh grader. (Ex. 2, p. 1).

2. The Student was initially referred to the Park Hill School District for special education evaluation during preschool, the 1993-1994 school year. (Ex. 124). An interdisciplinary team determined that the Student met eligibility criteria for early childhood special

education in the areas of personal-social, adaptive, fine motor, communication and cognitive. (Ex. 123, p. 9-10).

1. The Student's subsequent diagnoses include autism, language disorder, unspecified mental retardation and disruptive behavior disorder. (Ex. 102, 94).
2. From kindergarten through fourth grade, the Student received special education services at a separate day school within the Park Hill School District. (Ex. 93, 99, 111, 112, 115). During that time period, the Student was diagnosed with autism and a language disorder. (Ex. 102, 94).
3. During second grade, the 1996-1997 school year, consistent with the IDEA, the School District conducted a re-evaluation of the Student. (Ex. 102). The interdisciplinary team concluded that the Student continued to meet eligibility criteria to receive special education services as autistic. (Id.) The team also concluded that he needed related services in the areas of expressive language and voice. (Id.)
4. During fourth grade, the 1998-1999 school year, the IEP team referred the Student for re-evaluation to determine if the separate day school was the appropriate placement for the student. (Ex. 94). The interdisciplinary team concluded that the Student continued to meet eligibility criteria for special education services as autistic, pending completion of a psychiatric evaluation of the Student. (Id.) During the second semester of that year, the Student received educational services at a homebound placement while the psychiatric evaluation was completed. During this time, the Student received services pursuant to an Interim Individualized Education Program, reflecting the temporary home placement. (Ex. 83).
5. During fifth grade, the 1999-2000 school year, the Student transitioned from the home school placement to the regular education school, Chinn Elementary. (Ex. 77, 76, 74, 73). The Student's special education diagnosis was "other health impaired," based on the Student's diagnosis with a non-verbal learning disability, mixed developmental disorder, fine/gross motor delays, sensory processing delays, perceptual delays and pragmatic language. (Ex. 77).
6. During sixth grade, the 2000-2001 school year, the Student's IEP initially provided for full-time placement in the regular education school, Plaza Middle School. (Ex. 69). The Student's special education diagnosis continued as "other health impaired," with a non-verbal learning disability, mixed developmental disorder, fine/gross motor delays, sensory processing delays, perceptual delays and pragmatic language. (Id.) The Student's IEP for the sixth grade year included/noted the following:

(a) Functional Behavior Assessment (FBA), noting as follows:

[Student] has difficulty adjusting to new situations and tasks with some difficulty in

making transitions between sets if a visual or auditory set is not given. He will be susceptible to attentional errors in over-stimulating environments and needs help with limiting stimulation and distraction. He has difficulty perceiving the non-verbal aspects of social interactions, that is body language, facial expression and awareness of other non-verbal cues involved in social interactions. When academically frustrated, he will become increasingly distracted and begin conversing about topics that are off task. He needs strategies on how to let adults in charge know he is getting ready to escalate his behavior so proactive measures can be taken before an explosive situation develops. He does best in a very predictable learning environment. His strength is his sense of humor.

(Id.)

- a. Behavior Intervention Plan, providing for the following intervention strategies; direct and explicit redirection; redirect and correction; avoid negative reinforcements; never leaving the Student to his own devices in new activities or situations which lack sufficient structure; social stories to help with social interactions and following rules; game time; reports of good work to parents; "cooling off" time; gestures to indicate lowering of voice; ability to conference with an available adult; ability to talk with a parent. (Id.)
- b. Sensory diet, including as follows:
 - vestibular activities, such as use of trampoline, bouncing on a therapy ball, use of a rocking chair, swinging
 - proprioceptive activities, including the following: hand squeeze (stress ball, theraputty, styrofoam); push-up on desktop; foods/snacks (chewy things); heavy chores/work (move chairs, clean desk, push library carts,

etc.); gross motor exercise; deep pressure massage; deep pressure (place heavy blankets or mats on top of him); weighted vest; wear backpack with several books and joint compression. (Id.)

- a. Special instructions for bus conduct, including instructions on guiding the Student if he displays inappropriate actions or words. (Id.)
- b. Speech/language consultation and occupational therapy. (Id.)
- a. The provision of a full-time paraprofessional. (Id.)

(e) Educational modifications, including, but not limited to: modifications for handwriting assignments, strategies for transition times, visual schedules, extra time to get to places, strategies to provide clear instructions to the Student, and talk through (non-punitive) stressful situations. (Id.)

1. During September 2000 (sixth grade) the School District personnel documented the following:

- a. The Student told a staff member "I'm going to get you, Mrs. Kanki." (Ex. 68).
- b. After the announcement of the page number for homework, the Student yelled at the teacher, approached the teacher, and pushed against the teacher while yelling and pointing his finger in her face. (Ex. 67).
- c. After conferencing with a teacher about why he should not yell "this sucks" during class, the Student yelled to another student "I'm going to kick your ass." (Ex. 66).
- d. The Student yelled "I'm going to kick Chambers' [the principal's] ass" while in a classroom. (Ex. 65).
- e. The Student said "suck" and "shit" in class in front of other students.
- f. During physical education class, the Student said "fuck you" to students, told a teacher to "zip her ass" and told a teacher, while sticking his fist in her face, "shut up I ain't playing with you." (Ex. 63).
- g. The Student told a teacher to "shut up." (Ex. 62).

- h. During gym class, the Student called other students "sucker" and tried to grab them. After being told to stop, the Student told the teacher to "shut up." In the office, the Student told a staff member that he was going to shoot her and told a parent that he was going to kill her while shaking his fist in her face. The Student then told the principal that he was going to shoot everybody in the school including the principal and another administrator. The Student received 3 days of out-of-school suspension. (Ex. 61, 59, 58).
- i. After this incident, which occurred on September 22, 2000, the IEP team met on September 27 and conducted a Functional Behavior Assessment (FBA) and revised the Behavior Intervention Plan. (Ex. 56).

1. During October of 2000 the School District noted the following behavior concerns:

- a. The Student stuck his fist in another student's face; after she said, "don't," he stuck his fist in her face again and said "and I mean it." (Ex. 53).

(b) The Student told a teacher to "shut up" when he was told to walk instead of running down the hall and "flipped off" teachers in the hall. (Ex. 54).

(c) The Student flipped another student off and told the student he was going to "kick his ass." The Student walked to the other student's desk and pushed the desk over with the student in it. The other student hit his head on the floor. The Student stated "I'm going to bring a gun and shoot and kill all of you." (Ex. 52, 51, 47).

- a. The Student yelled, "I am tired of this detention crap" and told a teacher to "shut your mouth right now." (Ex. 49).
- a. After receiving two F grades, the Student pounded his fist on the teacher's desk and said that she "would pay for this." When another teacher intervened, the Student asked, "what do you want now Mrs. Tindall?" The teacher had to move out of the way and feared that the Student would have hit her had she not moved. (Ex. 43, 42).

1. On November 2, 2000, the IEP team decided to change the Student's placement to provide for homebound services for twelve hours per week for core courses. (Ex. 39). The Student received speech therapy, occupational therapy and counseling at the Park Hill High School. (Id.) The team also decided to contract consultation services through the Autism/Asperger Resource Center. (Id.) The Student continued to have access to after school activities during the homebound placement. (Id.)
2. During the end of the second semester of his sixth grade year, the Student began transitioning back to Plaza Middle School by attending two periods a day (90 minutes), Monday through Thursday, for Communications Arts class. (Ex. 38).
3. In May 22, 2001, the IEP team developed an IEP for the 2001-2002 school year (seventh grade). (Ex. 127). The Student's placement was at Plaza Middle School and provided for a full-time, one-on-one paraprofessional, counseling services, occupational therapy and speech and language therapy. (Id.) The IEP team also conducted a Functional Behavior Assessment and revised the Behavior Intervention plan. (Id.) The Student's special education diagnosis was "other health impaired," with mixed developmental disorder, non-verbal learning disability, fine and gross motor delays, sensory delays, perception delays and problems with language pragmatics. (Id.)
4. The IEP in place for the 2001-2002 school year provided for the following
 - a. Functional Behavior Assessment (FBA), noting the following successful behavior strategies: Direct and explicit redirection; structured settings; game time; vacation time (time out); sensory integration plan; use of stress-ball during processing; social skills stories to help with school rules; use of gestures to refocus (raise hand, remain seated, lower voice); special bus instructions; use of tape during foreign language rote learning; go to quiet room during frustration; go for a walk to "cool off;" talk through aggressive body language; use of tape measure to demonstrate proximity to others; define social roles; and never leave unattended; report good work to parents. (Ex. 126, p. 11)
 - b. The FBA further noted unsuccessful behavior strategies, including raising voice, negative reinforcement, use of whistles to regain class attention, repetition of rules and/or rote learning, and use of words "I am disappointed in you." (Ex. 126, p. 11).
 - c. The IEP also contained strategies for bus behavior. (Ex. 126).
 - d. The IEP contained a Sensory Integration Plan, providing for almost two pages of behavior intervention techniques. (Ex. 126).

e. The IEP contained intervention suggestions from the Student's former paraprofessional and occupational therapist. (Ex. 126).

1. On August 23, 2001, the IEP was modified to provide for homebound instruction, in addition to services provided at Plaza Middle School, for 360 minutes per week. (Ex. 126).
2. On August 28, 2001, the Student stated during a class presentation that the tobacco company "killed his father and I will get revenge." (Ex. 26).
3. On approximately October 10, 2001, the student became frustrated and agitated during art class. (Tr. 276:1-10). He told a female student in the class that he was going to "stick [his] fist up her butt." (Tr. 277:1-4). He approached another female peer and waived a clenched fist in front of her face. (Tr. 278:2-15). The Student's paraprofessional had to physically separate him from the student and remove him from the classroom. (Tr. 277:25-278:7).
4. On October 16, 2001, the IEP was modified to add lunch at Plaza Middle School. (Ex. 126).
5. On October 24, 2001, the Student became frustrated and agitated during Language Arts class and had to be removed from the class. (Tr. 264:23-267:2). While in the hallway, he stated to another student who was singing Christmas carols, "shut up or I'm going to kill you." (Ex. 26).
6. After removing him from the Language Arts class on October 24, 2001, the Student's paraprofessional contacted the Student's mother to come to the school. The Student proceeded to art class. He was with his full-time paraprofessional and his mother. (Tr. 268:15-22). As his agitation increased, the paraprofessional and his mother attempted to remove him from the room. (Tr. 269:6-270:6). The Student stated "I want to kill you all and cut off your heads, you too Ms. Ballou (the art teacher)." (Tr. 305:24-306:19). He approached the art teacher, Ms. Ballou, with his fist in the air. Ms. Ballou attempted to move away. (*Id.*) The Student became angrier, picked up a nearby sketchpad, and threw it at Ms. Ballou, striking her in the face and causing injury. (Tr. 307:23-308:3). The Student was removed from the class into the hall. (Tr. 308:24-309:1). In the hall he started screaming "I don't care about the other kids" and threw his trapper keeper onto the floor. (Tr. 309:8-18; Ex. 19).
7. As a result of the October 24, 2001 incident in art class, School District administrators reported the incident to the police and imposed a ten-day out-of-school suspension on the Student. (Exs. 15, 21). Following a manifestation determination, School District administrators determined that an extended term suspension could not be pursued. To date, the total suspension time imposed during the 2001-2002 school year with respect to this Student is 10 days.
8. The School District's disciplinary file regarding the Student reflects that during his time at the School District, he has physically assaulted adults on at least five occasions and another student on at least one occasion. (Tr.

365:6-13, Ex. 89, 86, 72, 67, 52, and 16). The physical assaults include (1) hitting a teacher with a clenched fist in the face four times; (2) hitting a school secretary in the buttocks with a tennis racket; (3) pinching, hitting and pulling the hair of a bus driver; (4) pushing against a teacher while yelling at her and sticking his finger in her face and (5) pushing a desk over on a student, resulting in the student hitting his head on the floor. (Id.)

9. As a result of the October 24, 2001 incident, the IEP team met to review the current IEP. The IEP team developed a revised IEP, indicating a change of placement to Niles Academy. (Ex. 2). The IEP team also conducted a Functional Behavior Assessment and revised the Behavior Intervention Plan. (Ex. 2).
10. Niles Prep is a private therapeutic school located in Kansas City, Missouri. The program at Niles is described as follows:

Niles Prep is state certified to provide educational, therapeutic and behavior management services for children ... who are unsuccessful in a normal school classroom. The therapeutic and behavior elements create an opportunity for students to learn appropriate behaviors and problem solving tools. We emphasize treatment that assists the student to return to their original school. Niles Prep has three components which are: (1) therapeutic intervention through individual and group therapy sessions and (2) behavior modification to reward appropriate behavior and extinguish inappropriate behavior, and (3) educational services individualized for each student.

(Ex. 130).

11. Niles provides an encompassing system of therapeutic services. (Ex. 131). Specifically, Niles provides individual counseling on a weekly basis and group counseling on a daily basis. (Ex. 130). Recreational therapy is provided on a daily basis. (Ex. 130). Music therapy is offered on a bi-weekly basis. (Ex. 130). Niles also has a full time professional therapist that is available to assist students. (Tr. 219:4-13).
12. Niles provides a behavior management program to teach students appropriate classroom behavior. The program includes a level system and a system of natural consequences designed to help students think about the consequences of inappropriate behaviors. (Ex. 131).
13. Niles is staffed and equipped to provide counseling, speech and language therapy and occupational therapy as provided for in the Student's IEP. (Tr. 221:17-21).
14. Niles provides a highly structured environment, with fewer passing times than the regular education school. (Tr. 353:9-23). During the passing times, there are relatively fewer students passing in the hall than in the regular education school. (Id.)

15. The class sizes at Niles are smaller than the classes in the regular education setting, providing for greater supervision. (Tr. 352:17-353:8). There are no more than seven students in each class. (Id.). The total student population at Niles is approximately thirty students. (Id.) Each class is taught by a classroom teacher and a full time aide. (Id.)
16. An integral component of the Niles Prep program is family involvement. (Ex. 130). Meetings are held between Niles staff and families approximately two times per month, often over dinner at the school. Niles also provides family therapy on a weekly basis. (Ex. 130).
17. A primary goal of Niles is to prepare students for transitioning back to their home schools. (Ex. 130, Tr. 353:24-354:25). Niles has a designated staff person for such a purpose, the transition coordinator. (Tr. 353:24-354:19). At the time of enrollment, the staff at Niles develop a transition plan with the student and family laying out the necessary steps towards transition. (Tr. 353:24-354:25).
18. Niles Prep monitors the therapeutic, academic and behavioral progress of its students on an annual basis. (Ex. 130). Niles reported an 83% positive increase in self-calming strategies among students. (Ex. 131).
19. On November 8, 2001, petitioner requested due process regarding the change of placement to the Niles Academy.

II. Conclusions of Law

The Panel, after hearing the evidence in this matter, makes the following conclusions of law:

1. Under the IDEA, school districts must provide a free appropriate public education (FAPE) in the least restrictive environment (LRE) appropriate to the child's needs. 42 U.S.C. §§1412(a)(1)(A), 1412(a)(5).
2. The IDEA's provisions regarding "least restrictive environment" do not create an absolute duty on the part of the school district. Barnett v. Fairfax County Sch. Bd., 721 F. Supp. 757, 761 (E.D. Va. 1989). Rather, whether a school district provides educational services in the LRE is *one consideration* in the ultimate calculus of whether a program is appropriate. Id. (emphasis added), citing Lachman v. Illinois St. Bd. of Educ., 852 F.2d 290, 295 (7th Cir. 1998); Town of Burlington v. Department of Educ., 736 F.2d 773, 799 (1st Cir. 1984).
3. Mainstreaming is not required where (1) the child would receive no educational benefit from mainstreaming; (2) any marginal benefit from mainstreaming would be significantly outweighed by benefits that could feasibly be obtained only in a separate instructional setting; or (3) the child is a disruptive force in the current educational setting. See Hartmann v. Loudoun County Bd. of Educ., 26 IDELR 167, 169 (4th Cir. 1997). *"Disruptive behavior that significantly impairs the education of other students strongly suggests a mainstream placement is no longer*

appropriate." Clyde K. v. Puyallup Sch. Dist. No. 3, 35 F.3d 1396, 1402 (9th Cir. 1994) (emphasis added).

4. A separate day school placement may be the least restrictive placement that allows the student educational benefit where a student's behavior is unpredictable, inappropriate, aggressive and violent. See generally Fulton County Sch. Dist., 29 IDELR 1118 (Ga. 1998) (upholding a change of placement from a regular education building to a separate school for students with behavioral disabilities as providing FAPE in the least restrictive environment because of the student's unpredictable, inappropriate and aggressive behavior); Glendale Unified Sch. Dist., 26 IDELR 803 (Cal. 1997) (same); M.L. Lincolnwood Bd. of Educ., 20 IDELR 1232 (N.D. Ill. 1997) (same); In re Amanda S., 26 IDELR 80 (Iowa 1997) (same); Liberty Local Sch. Dist., 26 IDELR 497 (Ohio 1997).
5. The Student's placement at the Niles Academy complies with the IDEA in that it provides the Student with a free and appropriate public education in the least restrictive environment appropriate to the Student's needs. The regular education building is not the appropriate placement for the Student at this time given the Student's unpredictable, aggressive and violent behavior.
6. Because the Student has received a total of 10 days of out-of-school suspension for the 2000-2001 school year, the procedural safeguards of the IDEA and its implementing regulations are not triggered. See 20 U.S.C. § 1415(k)(4); 34 C.F.R. § 300.519.

III. Decision and Order

The panel hereby orders that placement at Niles Academy is appropriate and complies with the IDEA. The panel finds that on October 24, 2001, the District acted in a manner consistent with the then-current IEP and that there is no violation of the IDEA and its implementing regulations with regard to discipline in that the Student has not been subject to a suspension exceeding 10 days.

IV. Appeal Procedures

Any party aggrieved by the decision of this panel may appeal the decision as set out in applicable state and federal laws, rules and regulation.

Signed this 28th day of December, 2001, by:

/s/ Robert P. Baine, Jr.

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Signed this 28th day of December, 2001, by:

/s/ Jerry Wright _____

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Signed this 28th day of December, 2001, by:

/s/ George Wilson

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Joint Exhibit List

Submitted by Petitioner and Respondent

1. Deposition Transcript of , taken Monday, December 10, 2001 (will be produced as soon as available).
2. IEP, dated 11/02/01. [GAR1]
3. Notes from IEP meeting, dated 11/02/01. [GAR 2]
4. Communication log, 08/31/01-11/02/01. [GAR 3]
5. Notes of Mr. Kalis, dated 11/02/01. [GAR 4]
6. Counseling session three, "Friends," Notes by Ms. Huffman outlining goals, dated 10/26/01. [GAR 5]
7. Letter from Ms. Lookers to Mr. Curry, dated 10/25/01. [GAR 6]
8. Letter from Mr. Curry to the s, dated 10/25/01. [GAR 7]
9. Photograph of Ms. Ballou, taken 10/25/01. [GAR 8]
10. Photograph of spiral notebook, taken 10/25/01. [GAR 9]
11. Notes from two students to Mr. Kalis regarding classroom seating and Wootie , dated 10/25/01. [GAR 10]
12. Note from Ms. Huffman describing counseling session with fellow student regarding fear/concern over Wootie's behavior, dated 10/24/01. [GAR 11]
13. To Whom It May Concern letter from Mr. Kalis regarding student safety and classroom liability, dated 10/24/01. [GAR 12]
14. To Whom It May Concern letter from Ms. Stigall regarding Wootie's classroom modifications and concern for her safety, dated 10/24/01. [GAR 13]
15. KCMPD Police Report No. 01-107170 regarding assault on Ms. Ballou, dated 10/24/01. [GAR 14]
16. Incident Report from Ms. Webb, dated 10/24/01. [GAR 15]

17. Statement from Ms. Ballou describing Art Room incident, dated 10/24/01. [GAR 16]
18. E-mail to Mr. Curry from another student's parent regarding Art Room incident with Wootie, dated 10/24/01. [GAR 18]
19. Letters from 7 students describing Art Room incident with Wootie, dated 10/24/01. [GAR 19]
20. Discipline Notice regarding Art Room incident, dated 10/24/01. [GAR 21]
21. Suspension Report Form, dated 10/24/01. [GAR 22]
22. IEP, dated 10/16/01. [GAR 23]
23. Daily journal of Pam Webb, various dates from 08/29/01-10/16/01. [GAR 24]
24. Notes regarding Counseling Session No. 2 "Friends—What happened this week?" 10/12/01. [GAR 26]
25. Ms. Huffman's Counseling Session Notes, dated 10/05/01. [GAR 29]
26. Ms. Stigall's Classroom Notes, various dates from 08/20/01-09/24/01. [GAR 30]
27. Ms. Huffman's summary of week, dated 09/21/01. [GAR 31]
28. Ms. Huffman's summary of week, dated 09/14/01. [GAR 32]
29. Ms. Huffman's summary of week, dated 09/07/01. [GAR 33]
30. Ms. Huffman's outline of Wootie's counseling session and summary, dated 09/02/01. [GAR 34]
31. Notes from Jane Anderson, dated 05/30/01. [GAR 36]
32. Sensory Integration Plan, dated 05/30/01. [GAR 37]
33. Notes from Rachel Kellermeyer, dated 05/30/01. [GAR 38]
34. IEP, dated 05/22/01. [GAR 40]
35. Draft letter to s from Ms. Peterson, dated 05/21/01. [GAR 41]
36. IEP, dated 04/02/01. [GAR 45]
37. Notice of Action regarding revision to IEP, dated 03/06/01. [GAR 47]
38. Notice of Action regarding of proposed change from Homebound to Plaza Middle School for all educational services, dated 02/27/01. [GAR 49]
39. Notice of Action to change placement from Self-contained to Homebound, dated 11/02/00. [GAR 52]
40. Suspension Report Form, regarding 10-day suspension for threatening teachers, dated 10/31/00. [GAR 53]
41. Letter to the s from Dr. Chambers, dated 10/31/00. [GAR 54]
42. Discipline Notice, regarding threat to school official (Ms. Tindall), dated 10/30/00. [GAR 56]
43. Discipline Notice, regarding inappropriate aggression/threat to school official (Ms. Hernandez), dated 10/30/00. [GAR 57]
44. Manifestation Determination Report, dated 10/16/00. [GAR 51]
45. Discipline Incident Summary, dated 10/09/00. [GAR 61]
46. Suspension Report Form, dated 10/09/00. [GAR 62]
47. Kansas City Missouri Police Report detailing threats by Wootie "to bring a gun and shoot and kill all of you," dated 10/06/00. [GAR 64]
48. Note from Todd Shiftman regarding "climate of fear" in other students caused by Wootie's behavior, dated 10/05/00. [GAR 66]
49. Discipline Notice for inappropriate language and disrespect to a teacher, dated 10/04/00. [GAR 67]

50. Documentation of Extra-curricular Activity, notes by Brian Bellof of Wootie's disruptive behavior in class, dated 10/04/00. [GAR 68]
51. Notes from fellow students to Ms. Hernandez describing Wootie's misbehaviors in class and how it frightened them, dated 10/04/00. [GAR 70]
52. Discipline Notice for pushing desk over on student, dated 10/04/00. [GAR 71]
53. Discipline Notice for threatening teacher, dated 10/03/00. [GAR 72]
54. Discipline Notice for disrespect and flipping off teachers, dated 10/03/00. [GAR 73]
55. Notice of Action regarding proposed change of school week from 1800 minutes to 1440 minutes, dated 09/27/00. [GAR 74]
56. Functional Behavior Assessment, dated 09/27/00. [GAR 75]
57. Letter to the s from Dr. Chambers, dated 09/27/00. [GAR 76]
58. Discipline Notice for threatening to kill various students, parents, and administrators, dated 09/22/00. [GAR 77]
59. Discipline Notice for threatening to shoot and hit teachers, dated 09/22/00. [GAR 78]
60. Chart summarizing Wootie's incidents of inappropriate behavior, disability impact and recommendations, dates from 09/05/00-09/22/00. [GAR 80]
61. Suspension Report Form, dated 09/22/00. [GAR 81]
62. Discipline Notice for telling a teacher to shut up, dated 09/18/00. [GAR 82]
63. Discipline Notice for classroom disruption, inappropriate language ("f...you to students and responded to coach to "zip her ass"), being disrespectful and defiant, dated 09/18/00. [GAR 83]
64. Handwritten note from fellow student regarding Wootie getting in a student's and stating "if it wasn't for you, I would have won student council," dated 09/18/00. [GAR 84]
65. Discipline Notice for multiple inappropriate behaviors and stating "I'm gonna kick (Dr.) Chambers ass," dated 09/15/00. [GAR 86]
66. Discipline Notice for threatening student, dated 09/15/00. [GAR 87]
67. Discipline Notice for threatening and pushing teacher, dated 09/14/00. [GAR 88]
68. Discipline Notice (threatened teacher). [GAR 89]
69. Notice of Action regarding changing current placement following advancement to 6th grade, with IEP attached, dated 05/24/00. [GAR 90]
70. Letter to s from Principal Tulipana outlining conduct rules and penalties for receiving bus conduct slips, dated 03/21/00. [GAR 94]
71. Bus Conduct Report, Wootie using numerous profanities and told students "I'm going to kill you," dated 03/20/00. [GAR 95]
72. Bus Conduct Report, reporting that Wootie assaulted driver, pinched, hit, and pulled her hair, 03/15/00. [GAR 96]
73. IEP Additional Components, to begin 03/13/00. [GAR 97]
74. IPE Additional components, to begin 02/22/00. [GAR 98]
75. Occupational Therapy IEP goals, dated 01/10/00. [GAR 100]
76. Notice of Action, dated 01/10/00. [GAR 103]
77. IEP, dated 09/24/99. [GAR 115]
78. Occupational Therapy Evaluation by Collier Therapy Consultants, Inc., dated 09/02/99 [GAR 118]

79. Neurophysiological Assessment by the Rehabilitation Psychology and Neuropsychology Department of Rehabilitation Medicine, University of Kansas Medical Center, dated 07/13/99. [GAR 119]
80. Special Education Consultation by Dr. Steve Colson, dated 05/13/99. [GAR 120]
81. Autism/Asperger Syndrome Resource Center (AARC) Observation Consultation, authorized on 05/05/99. [GAR 121]
82. Notice of Action, dated 04/21/99. [GAR 122]
83. IEP, dated 03/08/99. [GAR 123]
84. Notice of IEP meeting, dated 03/03/99. [GAR 125]
85. DSS Diagnostic Summary of Comprehensive Evaluation, dated 02/08/99. [GAR 126]
86. Note from Ms. Martinez, regarding incident where Wootie hit her on the buttocks with a tennis racket, dated 01/13/99. [GAR 130]
87. Behavior Intervention Plan, dated 11/18/98. [GAR 138]
88. Letter to s from Trudy Turner regarding suspension for three days after physically assaulting teacher, dated 11/13/98. [GAR 140]
89. Discipline Notice, regarding an assault by Wootie who hit a teacher four times in face, dated 11/12/98. [GAR 141]
90. Behavior Summary, documenting Wootie's conduct at Chinn, dates from 06/16/98-11/02/98. [GAR142]
91. Health Screening Form for Wootie , dated 10/21/98. [GAR 143]
92. Ms. Crzner's chronology of Wootie's misconduct, including violent threats, frequent profanities and other instances of misbehavior. [GAR 144]
93. IEP, dated 05/08/98. [GAR 146]
94. DSS Diagnostic Summary of Comprehensive Evaluations, dated 01/00/98. [GAR 149]
95. Bus Conduct Report, for singing Beavis and Butthead repeatedly, dated 11/26/97. [GAR 150]
96. Bus Conduct Report, for yelling at fellow students and saying "shut up," dated 11/26/97. [GAR 151]
97. Bus Conduct Report, for refusing to cooperate and spitting on driver's face, dated 11/18/97. [GAR 152]
98. Bus Conduct Report, for sticking out tongue, shouting and spitting, dated 11/18/97. [GAR 153]
99. IEP, dated 11/10/97. [GAR 154]
100. IEP Special Services Data Entry Form, dated 06/01/97. [GAR 156]
101. Bus Conduct Report, for kicking seats and stomping on the floor requiring bus to return back to school, dated 04/23/97. [GAR 158]
102. DSS Diagnostic Summary of Comprehensive Evaluations, dated 03/27/97. [GAR 161]
103. Bus Conduct Report, for using unacceptable language, being loud, refusing to cooperate, and discourteous conduct, dated 03/19/97. [GAR 162]
104. DSS Notice of Intent to Re-evaluate, dated 01/29/97. [GAR 163]
105. Bus Conduct Report, for refusing to sit in seat, and being very loud and argumentative, dated 01/26/97. [GAR 164]

- 106. Screening Referral for Comprehensive Evaluation, Summary of Screening Results, dated 01/23/97. [GAR 165]
- 107. Bus Conduct Report, for refusing to stop screaming "shut up N.....", dated 01/17/97. [GAR 166]
- 108. Bus Conduct Report, for saying "Nigger" and attempting to hit driver, dated 12/13/96. [GAR 167]
- 109. Evaluation Plan, dated 11/25/96. [GAR 168]
- 110. In-school suspension for threatening student and for kicking, hitting, scratching and biting staff, dated 09/24/96. [GAR 170]
- 111. IEP Acceptance Form, dated 05/30/96. [GAR 171]
- 112. IEP, dated 05/30/96. [GAR 172]
- 113. Bus Conduct Report, refusal to cooperate and was removed from bus, dated 04/04/96. [GAR 173]
- 114. Annual Justification for Placement, dated 15/18/95. [GAR 175]
- 115. IEP Acceptance From, dated 05/19/94. [GAR 177]
- 116. Consultation Report by Richard Simpson, Consultant for the University of Kansas Medical Center, Department of Special Education, dated 04/28/94. [GAR 179]
- 117. IEP Acceptance Form, dated 02/22/94. [GAR 180]
- 118. Notice of Change in Placement, placed in self-contained day program, dated 02/22/94. [GAR 181]
- 119. Annual Justification for Placement, dated 02/22/94. [GAR 182]
- 120. The University of Kansas Medical Center CRU Medical Evaluation, dated 01/05/94. [GAR 183]
- 121. IEP Acceptance Form, dated 11/05/93. [GAR 184]
- 122. Notice and Consent for Initial Placement, dated 11/05/93. [GAR 185]
- 123. DSS Comprehensive Psycho-educational Evaluation, dated 10/21/93. [GAR 186]
- 124. Notice and Consent for Initial Evaluation, dated 09/17/93. [GAR 187]
- 125. Temporary Restraining Order, dated 11/14/01.

125(a). Documents from Circuit Court Proceeding Regarding Temporary Restraining Order.

- 126. 2001-02 IEP documents.
- 127. Affidavit of George Curry.
- 128. Psychological Report from University of Kansas Medical Center from David Richman, Ph.D. and R. Matthew Reese, Ph.D., dated April 16, 1999
- 129. IEP dated 10/16/01.
- 130. Brochure from Niles Prep.
- 131. Materials regarding study at Niles Prep.